

REMARKS/ARGUMENTS

Claims 1-7 remain in this application.

No new matter has been added.

In response to the Office Action of March 30, 2007, Applicant requests re-examination and reconsideration of this application for patent pursuant to 35 U.S.C. 132.

Rejection under 35 USC 103(a)

Claims 1, 2, 4, 5 and 7 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Jensen (4,519,657) in view of Greene (6,284,336).

The Examiner alleges that Jensen discloses a deformation resistant power pedestal comprising:

a hollow rectangular post (Fig 16) having load bearing walls (65) defining exterior and interior surfaces and first and second open ends (proximate 81 and 62 respectively), a reinforcing cap (79) constructed for insertion within the first open end (proximate 81), the cap engages the interior surface of the post to prevent movement of the exterior surface, and retention means (proximate 81) arranged for retaining the cap within the post. Jensen discloses that the body (65) may be made of polyester or fiberglass resin (Col. 3, lines 57-63), but it does not disclose the body is polyester cloth with fiberglass resin. Greene discloses a post made of polyester cloth with fiberglass resin (Col. 3, lines 28-35).

The Examiner then concludes that it would have been obvious to one of ordinary skill in the art to make the post in Jensen in the manner of Greene because while Jensen discloses the body may be made of polyester or fiberglass resin, a polyester cloth would aid in ease of production of manufacturing the pedestal by aiding the maintaining of its shape and the fiberglass resin would be an obvious bonding agent for the cloth.

The Examiner also admits that Jensen does not disclose the load bearing limitation. The Examiner concludes that it would have been obvious to a person having ordinary skill in the art as a matter of design choice to design the post of Jensen to hold 18 times the weight of the assembly in order to function properly without failure and the prior art is capable of being designed to met these limitations.

Regarding claim 2, the Examiner alleges that cap 79 of Jensen is equivalent to the cap of the present invention.

Regarding Claim 4, the Examiner alleges that the cover 56 of Jensen is equivalent to the mounting surface of the present invention.

Regarding claim 5, the Examiner alleges that Greene teaches the use of an additive to provide resistance to ultraviolet radiation and refers to column 3, lines 30-34 for the teaching.

Regarding claim 7, the Examiner alleges that:

Jensen discloses a process by providing a pedestal assembly a hollow rectangular post (Fig 16) having load bearing walls (65) defining exterior and interior surfaces and first and second open ends (proximate 81 and 62 respectively), a reinforcing cap (79) constructed for insertion within the first open end (proximate 81), the cap engages the interior surface of the post to prevent movement of the exterior surface, and retention means (proximate 81) arranged for retaining the cap within the post, and attaching at least one appurtenant structure (Fig. 15: 56) via through-bolts. Jensen discloses that the body (65) may be made of polyester or fiberglass resin (Col. 3, lines 57-63), but it does not disclose the body is polyester cloth with fiberglass resin. Greene discloses a post made of polyester cloth with fiberglass resin (Col. 3, lines 28-35).

The Examiner then concludes that it would have been obvious to one of ordinary skill in the art to make the post in Jensen in the manner of Greene because while Jensen discloses the body is made of polyester or fiberglass resin, a polyester cloth would aid in ease of production of manufacturing the pedestal by aiding the maintaining of its shape and the fiberglass resin would be an obvious bonding agent for the cloth.

The Examiner also admits that Jensen does not disclose the load bearing limitation. The Examiner concludes that it would have been obvious to a person having ordinary skill in the art as a matter of design choice to design the post of Jensen to

hold 18 times the weight of the assembly in order to function properly without failure and the prior art is capable of being designed to met these limitations.

Finally, the Examiner admits that Jensen does not disclose placing the pedestal in the ground. The Examiner concludes that it would have been obvious to a person having ordinary skill in the art to place the post of Jensen in the ground at such depth, absent a prepared foundation, to stabilize the pedestal.

Applicant respectfully disagrees with the Examiner's determination that the claimed subject matter is obvious.

To establish a *prima facie* case of obviousness three basic criteria must be met (MPEP 2142). First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

The Greene reference teaches providing a veil of polyester cloth on a fiberglass resin pipe. The interior of the pipe is completely filled with a mixture of stone, sand water and Portland-type cement, as illustrated in Figs. 1-3. The pipe obtains its strength from the core 12 as explained at column 2,

lines 45-56. Claims 1 and 7 of the present invention recite *inter alia* "...a hollow rectangular post formed of a polyester cloth veiled fiberglass reinforced resin...". If the power pedestal of Jensen were modified by Greene, as proposed by the Examiner, the aluminum body 1 of Jensen would be replaced by a fiberglass reinforced resin pipe veiled with a polyester cloth. This structure alone is not strong enough to withstand normal use and must be provided with a solid core, as noted in column 2, lines 57-64 of Greene. Therefore, the hollow interior of Jensen, as modified by Greene, would have to include a solid core. This would preclude the placement of the circuit breakers 7, power outlets 8 and meters 14 in the interior of the service unit or power pole of Jensen. Thus, there would not be a reasonable expectation of success of the modification of Jensen by Greene, as proposed by the Examiner, necessary to establish a *prima facie* case of obviousness.

In addition, the proposed modification of Jensen by Greene would not teach or suggest all of the claim limitations, specifically the hollow rectangular post of claims 1 and 7, required to establish a *prima facie* case of obviousness.

The Examiner's conclusion that it would have been a matter of design choice to design the post of Jensen to hold 18 times the weight of the assembly to function properly is not based on

any evidence. There are no teachings in Jensen or Greene which indicate the strength of the service unit or pole and the weight of the elements attached thereto. If the Examiner continues to allege this conclusion of obviousness, then he is required to provide evidence to support this conclusion.

The Examiner admits that Jensen does not disclose "...implanting the pedestal assembly in the ground to a depth between about 30" and 36"...", as recited in claim 7. He then concludes that it would have been obvious to place the post of Jensen in the ground at a depth to stabilize the pedestal. The service unit or post of Jensen includes a base 2 which is designed to be bolted to a jetty, wharf or cast concrete base (col. 2, lines 64-66). There is no teaching or disclosure in Jensen to place the post of Jensen into the ground. The only teaching of placing the post into the ground is found in Applicant's disclosure and this is not permitted, *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Claim 3 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Jensen in view of Greene and further in view of Zemon (U.S. 5,603,389).

The Examiner alleges that Jensen in view of Greene disclose the claimed invention except for a plurality of fasteners to fasten the cap. Although the fasteners 46 of Zemon do not

fastening a cap to spaced apart load bearing walls, as recited in claim 3, the fastening means 42 secures cap 20 to spaced apart walls 16. However, Zemon fails to supply the deficiencies in the proposed combination of Jensen and Greene, note above. As a result Jensen, Greene and Zemon when taken together do not teach or disclose all the claim limitations required to establish a *prima facie* case of obviousness.

Claim 6 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Jensen in view of Greene and further in view of Fawley (U.S. Publication 2002/0095905).

The Examiner alleges that Jensen in view of Greene disclose the invention as claimed except for the polyester resin of Greene being an isophthalic polyester resin. He then states that Fawley discloses a shaft made of an isophthalic polyester resin. Finally, the Examiner concludes that it would have been obvious to use the isophthalic resin of Fawley in place of the polyester resin because the polyester resin of Greene is inclusive of the isophthalic polyester resin of Fawley.

Claim 6 recites an isophthalic polyester resin containing about 56.5% to about 61% glass by weight. The isophthalic polyester resin of Fawley contains 70% glass by weight (para. 0039). Therefore, Fawley does not teach or disclose all the claim

limitations required to establish a *prima facie* case of obviousness.

In addition, Fawley fails to supply the deficiencies in the proposed combination of Jensen and Greene, note above. As a result Jensen, Greene and Fawley when taken together do not teach or disclose all the claim limitations.

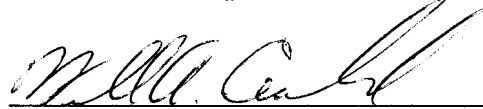
In light of all of the above remarks. Applicants respectfully submit that the Examiner has failed to establish a *prima facie* case of obviousness and further contend that a person of ordinary skill in the art, having the references Jensen, Greene, Zemon and Fawley, in front of him or her would not have the information and motivation necessary to arrive at Applicants' invention.

Accordingly, Applicants respectfully submit that the claimed deformation resistant power pedestal assembly distinguishes over the prior art and respectfully request that the rejections of claims 1-7 under 35 U.S.C. 103(a) now be withdrawn.

SUMMARY

In light of the foregoing remarks and amendment to the claims, it is respectfully submitted that the Examiner will now find the claims of the application allowable. Favorable reconsideration of the application is courteously requested.

Respectfully submitted,



William A. Cuchlinski
Registration # 57,159

The Commissioner for Patents is hereby authorized to charge any deficiency in any fees due with the filing of this paper or credit any overpayment in any fees on the filing to Deposit Account No. 13-0439.

Authorized signature,



Ferris H. Lander
Registration # 43,377

McHale & Slavin, P.A.
2855 PGA Boulevard
Palm Beach Gardens, FL 33410
(561) 625-6575 (Voice)
(561) 625-6572 (Fax)